CHEVRON OIL COMPANY

IBLA 77-44, 77-51 Decided September 27, 1977

Appeals from decisions of the Utah and Nevada State Offices, Bureau of Land Management, rejecting geothermal lease applications U-25239 and N-8399.

Affirmed as modified.

1. Applications and Entries: Generally--Geothermal Leases: Applications--Geothermal Leases: Lands Subject to--Public Lands: Generally

A geothermal lease application is properly rejected to the extent that it includes land which has been reconveyed to the United States but which has only been opened to applications under the nonmineral public land laws. Energy Partners, 21 IBLA 352 (1975), is distinguished.

APPEARANCES: W. A. Burton, Manager, Contracts and Titles, Chevron Oil Company, Western Division, Denver, Colorado, and Barbara F. Perez, Assistant Secretary, Chevron Oil Company, San Francisco, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Chevron Oil Company has appealed from separate decisions of the Utah and Nevada State Offices, Bureau of Land Management, rejecting geothermal lease applications U-25239 and N-8399. The lands involved in this appeal had been patented and later reconveyed 1/ to the United

1/ By decision N-8399, dated October 20, 1976, the Nevada State Office rejected appellant's application for SE 1/4, sec. 27, T. 32 N., R. 49 E., M.D. Mer., Nevada. The record shows that the reconveyance to the United States reserved the minerals in this land to the Southern Pacific Company. Appellant accepts the rejection of its application for sec. 2, T. 31 N.

States pursuant to the Taylor Grazing Act, as amended, 43 U.S.C. § 315g (1970), repealed, Federal Land Policy and Management Act of 1976, § 705, 90 Stat. 2792. In both instances, the State Offices indicated that the United States did not own the mineral interests in the subject parcels of land and rejected appellant's applications on that basis. Appellant properly points out that the United States should not disclaim ownership of the geothermal resources in the subject lands until it is judicially determined whether the geothermal resources in these lands belong to the surface or mineral estate, and appellant contends that its applications ought to be suspended until the title questions are resolved, citing our decision in Energy Partners, 23 IBLA 352 (1975), and section 21(b) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1020(b) (Supp. I, 1971). 2/

Energy Partners concerned geothermal lease applications for land which had been patented under the Stock-Raising Homestead Act with a reservation of minerals to the United States. The regulations clearly make such lands available for leasing so that an application must include that land if other land in the same section is also

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fn. 1 (continued)

By decision U-25239, dated September 24, 1976, the Utah State Office rejected appellant's application for lots 3, 4, S 1/2 NW 1/4, SW 1/4 of sec. 5, lots 1-5, SE 1/4 NW 1/4, SW 1/4 NE 1/4 of sec. 6, T. 26 S., R. 9 W., S.L. Mer., Utah. The warranty deed reconveyance to the United States does not include an exception for minerals, but a previous minerals exception is indicated in the abstract.

2/ Section 1020(b) provides as follows:

"Geothermal resources in lands the surface of which has passed from Federal ownership but in which the minerals have been reserved to the United States shall not be developed or produced except under geothermal leases made pursuant to this chapter. If the Secretary of the Interior finds that such development is imminent, or that production from a well heretofore drilled on such lands is imminent, he shall so report to the Attorney General, and the Attorney General is authorized and directed to institute an appropriate proceeding in the United States district court of the district in which such lands are located, to quiet the title of the United States in such resources, and if the court determines that the reservation of minerals to the United States in the lands involved included the geothermal resources, to enjoin their production otherwise than under the terms of this chapter: Provided, That upon an authoritative judicial determination that Federal mineral reservation does not include geothermal steam and associated geothermal resources the duties of the Secretary of the Interior to report and of the Attorney General to institute proceedings, as hereinbefore set forth, shall cease."

applied for. 3/ But because there had been no final judicial determination of the effect of the federal mineral reservation on geothermal resources, the Board held that it was proper to suspend applications for land where the minerals had been reserved to the United States. 4/

[1] Even if it should be established that the United States owns the geothermal resources in the lands in issue, an historic rule of public land administration directs the rejection of appellant's applications: the notation rule. When land is restored to the public domain by reconveyance or cancellation of a patent, or restored from a withdrawal, the land does not become open to application at the time of reconveyance but only upon notation of the availability of the land on the land office records or by notice in the Federal Register. Applications are properly rejected if they are filed before the land

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3/ 43 CFR 3201.1-1 provides:

"Subject to the exceptions listed below, geothermal leases may be issued in combination or separately for (a) lands administered by the Secretary of the Interior; (b) national forest lands or other lands administered by the Department of Agriculture through the Forest Service; and (c) geothermal resources in lands which have been conveyed by the United States subject to a reservation to the United States of geothermal resources." (Emphasis added.)

43 CFR 3210.2-1 requires that an application include:

"(c) A complete and accurate description of the lands applied for, which must include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed or protracted and are descri[b]ed by metes and bounds, al[l] the lands which will be included in a section when the lands are surveyed or protracted; * * *." (Emphasis added.)

4/ The U.S. Court of Appeals for the Ninth Circuit has recently held that geothermal resources were reserved as minerals remaining in federal ownership when land was patented under the Stock Raising Homestead Act. United States v. Union Oil Co. of California, 549 F.2d 1271 (9th Cir. 1977), petition for cert. filed sub nom., Ottoboni v. United States, 45 U.S.L.W. 3841 (U.S. June 17, 1977) (No. 76-1796).

Union Oil and Energy Partners refer to land which had been patented with a statutory reservation of minerals to the United States, but those decisions do not support the position that applications should be suspended in all cases where there is some question concerning title to the geothermal resources. Rather, the decisions embody an exception to the Department's general approach that applications are rejected where it is not clear that the United States has title to the resources applied for. See Leonard R. McSweyn, 26 IBLA 376 (1976).

Construing the effect of a mineral reservation in a private conveyance to the United States presents a different set of legal issues than construing a statutory reservation, and different reservations could be construed as having varying effects.

has been opened. 43 CFR 2091.1(e). See, e.g., Estate of John C. Brinton, 26 IBLA 283 (1976); D. K. Edwards, v. Albert G. Brockbank, A-25960 (April 3, 1951); Floyd Hamilton, 60 I.D. 194 (1948); Earl Crecelouis Hall, 58 I.D. 557 (1943); Martin Judge, 49 L.D. 171 (1922); Stewart v. Peterson, 28 L.D. 515, 519 (1899). This rule frees the public land records from being burdened with applications on which no action can be taken in the foreseeable future and ensures all members of the public an equal opportunity to file.

In both cases under appeal, the lands were only open to applications under the nonmineral public land laws. 5/ The mineral public land laws include the Geothermal Leasing Act. That Act amended the Multiple Mineral Development Act, 30 U.S.C. § 530 (Supp. I, 1971), to define "mineral leasing laws" as including the Geothermal Steam Act and to define "Leasing Act minerals" as including "all geothermal steam and associated geothermal resources" for the purpose of that Act. When lands are open to application only under certain laws, they do not become open under other laws. Oklahoma v. Texas, 258 U.S. 574, 600 (1922). Thus, these lands did not become open to geothermal lease applications upon enactment of the Geothermal Steam Act. 6/ The applications therefore were properly rejected.

5/ The land applied for in N-8399 was opened only to applications under the nonmineral public land laws by the order of February 8, 1961, 26 F.R. 1379.

The land applied for in U-25239 was listed in the opening order of February 7, 1958, 23 F.R. 978, as land for which the minerals had not been reconveyed to the United States. The order then directed how applications under the various laws were to be administered with no express provision limiting the subject land to applications under the nonmineral land laws. However, because the order indicated that the minerals in the subject land had not been conveyed to the United States, we construe the order as only opening the land to operation of the nonmineral public land laws.

6/ It may be argued that the opening orders intended to open for disposition those resources which were owned by the United States, and the fact that the lands were only opened to applications under the nonmineral public land laws should not preclude applications for geothermal leases until the ownership of the geothermal resources is determined. However, ownership of resources is sometimes not the sole criterion by which lands are made available for applications; the suitability of the land for various activities is also a factor, and certain forms of development may be precluded in the public interest even though the government may own the resources for which development is proposed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as modified.

Joseph W. Goss
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge